IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SEVENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NOs : 9000 of 2002 and W.P.No.20086 of 2002

W.P.No.9000 of 2002:

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Between:

The Vijayawada Weaker Sections Organization, Rep by its President, J.Papa Rao S/o. Nagabhushanam, Vijayawada.

..... PETITIONER

AND

1. The Government of Andhra Pradesh, Rep: by its Principal Secretary, Revenue, UC.1 Department, Secretariat, Hyderabad.
2. The Chief Commissioner of Land Administration, Board of Revenue Buildings, Station Road, Nampally, Hyderabad.
3. The Commissioner (Appeals), Urban Land Ceiling, Board of Revenue Buildings, Station Road, Nampally, Hyderabad.
4. The Special Officer and Competent Authority, Urban Land Ceilings, Arundel Complex, Rajagopalachari Street, Vijayawada - 2.
5. Pedarla Sivarama Prasad S/o. Narsimha Rao, Seetharampuram, Vijayawada-2.

.....RESPONDENT(S)

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus or any other appropriate Writ order or direction declaring the inaction of the respondents 3 & 4 herein in not enabling the 5th respondent herein to comply with the proposed construction of houses for the benefits of weaker sections of the Locality as originally proposed by the Form V U/S 21 (c) of the ULC Act as arbitrary, illegal and violative of principles of natural justice and consequently direct the 5th respondent herein not to alienate excess vacant land in N.T.S.No.39/A Machavaram Village, Vijayawada Urban Krishna District as determined under Section 8(4) of the Act dt.7.11.2001 to the order of the 4th respondent herein in

favour of third parties.

Counsel for the Petitioner: MR.C.C.S.SASTRY

Counsel for the Respondent Nos.1 to 4: GP FOR REVENUE

Counsel for the Respondent No.5: Mr. C. Hanumantha Rao

And

(2) WRIT PETITION NO: 20086 of 2002

Between:

The Mahalakshmi Co-operative House Building Society Ltd.,
No. G.2761, Vijayawada, having its Head Office at D.No.60-22-2, Siddhartha Nagar, Vijayawada - 10, rep. by its President Sri Lanka Rama Chandraiah.

..... PETITIONER

AND

1. The State of A.P., Rep by its Prl. Secretary to Revenue, Secretariat, Hyderabad.
2. The Commissioner for Appeals, Urban Land Ceiling Hyderabad.
3. The Special Officer and Competent Authority, Urban Land Ceilings, Vijayawada.
4. The District Collector, Krishna District, Machilipatnam.
5. The Commissioner, Municipal Corporation of Vijayawada, Vijayawada.*
6. The Mandal Revenue Officer, Vijayawada Urban Mandal, Vijayawada.Krishna District.*

7. The Station House Officer, Machavaram Police Station, Machavaram, Krishna District.*

8. Pedarla Siva Rama Prasad S/o. Late Narasimha Rao, R/o. 33-22-24, Sita Rama Puram, Vijayawada, Krishna District.
9. Smt G.Sivamma W/o. Garimella Subba Rao, D/o.Late Pedarla Narsimha Rao, R/o. G-3, Jagadish Apartments, Mogulrajapuram, Vijayawada, Krishna District.
10. Smt Ch. Vijaya Lakshmi, W/o. Babu Rao, D/o. Late Pedarla Narasimha Rao, R/o. H.No.5-8/1, Kukatpally, Hyderabad.
11. Smt M.Durga Rani W/o Krishna Rao, D/o. Late Pedarla Narsimha Rao, R/o. Deepthisree Nagar, B.H.E.L.Colony, Hyderabad.

*(The WP is dismissed as against RR 5 to 7 vide C.O.dt.10/10/02)

.....RESPONDENT(S)

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or order more particularly one in the nature of writ of mandamus directing the respondent No.1 to 3 not to entertain any application that was filed by the respondent No.8 to 11 for regularization of excess vacant land to an extent of 6,555 Sq. meters in R.S.No.39/A of Machavaram Village, Vijayawada Urban, Krishna District under G.O.Ms.No.456 Rev. UC-1 Department, dt.29.7.2002 and in view of the sale of the land and delivery of possession of the land on 27.03.1982 and receipt of the consideration vide written agreement of sale dt.27.03.1982 and in pursuance of this Hon'ble Court directions to the 1st respondent passing orders in exempting the land an extent of 6,555 sq. meters as per G.O.Ms.No.136, dt.28.01.1981 and continuance of the possession of the petitioner society over the land and further direct the respondent No.4 to 7 not to entertain any application from the respondents 8 to 11 in respect of the purchased land of the petitioner society for construction of building or buildings in the purchased land of the petitioner society to an extent of 6,555 Sq.Meters in R.S.No.39/A of Machavaram Village, Vijayawada Urban, Krishna District.

Counsel for the Petitioner: MR.C.HANUMANTHA RAO

Counsel for the Respondent Nos.1 to 4: GP FOR REVENUE

Counsel for the Respondent Nos.8 to 11: Mr. C.C.S. Sastry

The Court made the following:

THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

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WRIT PETITION NOS.9000 and 20086 of 2002

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COMMON ORDER:

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Since these two petitions are inter connected, they are being disposed of by a common order.

2. Writ Petition No.9000 of 2002 is filed seeking permission to construct houses for the benefit of weaker sections from out of the excess land surrendered by the deceased father of the 5th respondent, and Writ Petition No.20086 of 2002 is filed seeking a direction to the State of Andhra Pradesh, Commissioner of Appeals (Urban Land Ceilings), Hyderabad, and Special Officer and Competent Authority,

Urban Land Ceilings, Vijayawada, not to entertain applications that may be filed by respondents 8 to 11 for regularization of the excess vacant land to an extent of 6,555 Sq. Meters in R.S.No.39/A of Machavaram and also a direction to respondents 4 to 7 not to entertain applications from respondents 8 to 11 for construction of building or buildings in an extent of 6,555 Sq. Meters in R.S.No.39/A of Machavaram.

3. The contention of the learned counsel for the petitioner in W.P.No.20086 of 2002, which claims to be a cooperative society registered under the provisions of the A.P. Cooperative Societies Act, 1964, is that since W.P.No.9759 of 1983 filed by the petitioner was disposed of on 02-11-1987 with a direction to the Government to keep the matter pending till the appeal in the Supreme Court is disposed of and with a direction to the petitioner not to change the use of the land, and since the Special Officer and Competent Authority, Urban Land Ceilings office, Vijayawada, addressed a letter dated 18-09-1993 to the Commissioner of Land Reforms, Urban Land Ceilings, A.P., Hyderabad, to issue clearance sought for by the President of the petitioner-society to enable him to provide house sites to the members of the society and since W.P. No.15158 of 1999 filed by the petitioner was disposed of on 22-07-1999 with a direction to the Government of Andhra Pradesh to consider and dispose of the application filed by the petitioner under Section 20(1) (a) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act), in accordance with law, after taking into consideration the recommendations made by the Commissioner (Appeals), Urban Land Ceilings, Hyderabad and the Special Officer and Competent Authority, Urban Land Ceilings, Vijayawada, if not already done, within a period of two months from the date of receipt of a copy of the order, and since in Contempt Case No.695 of 2000 filed by the petitioner-society, when the order in W.P.No.15158 of 1999 is not complied with, a further direction was given to the Government of Andhra Pradesh to consider and dispose of the application filed by the petitioner under section 20(1)(a) of the Act in terms of the direction already issued, it is clear that the petitioner is entitled to regularization of the land agreed to be purchased by it, and since the heirs of the owner of the land, with a view to cause wrongful loss to the petitioner, are trying to create rights in favour of third parties, especially to the petitioner in W.P.No.9000 of 2002, with a view to create complications, petitioner is obliged to file this petition. It is his contention that since one of the conditions in G.O.Ms.No.456 dated 29.07.2002 relating to seeking

exemption under Section 20(1)(a) of the Act, is withdrawal of all the litigations pending before any Court, in view of its filing W.P.No.9000 of 2002 petitioner in the said W.P.No.9000 of 2002, which according to him is not a registered society, is not entitled to the relief in the petition and so W.P.No.20086 of 2002 may be allowed and W.P.No.9000 of 2002 is liable to be dismissed.

4. There is no representation on behalf of the petitioner in W.P.No.9000 of 2002.

5. The contention of the learned Government Pleader, since the petitioner in W.P.No.9000 of 2002 did not produce any document to show that it is a registered society and since the applications filed by the petitioners would be considered and disposed of in accordance with the guidelines issued in G.O.Ms.No.136 dated 28.08.1981, these petitions are liable to be dismissed.

6. Without going into the merits and the contentions raised by the learned counsel for the petitioner in W.P.No.20086 of 2002 and the learned Government Pleader, I am of the opinion that both the Writ Petitions are mis-conceived and the prayers sought in these petitions cannot be granted by this Court exercising jurisdiction under Article 226 of the Constitution of India, since petitioners do not have title to the property in respect of which they are seeking relief. The case of the petitioner in W.P.No.9000 of 2002 is that the owner of the land who filed a declaration under the Act, proposed to construct houses for the benefit of the weaker sections of the society in the excess land, and so government may be directed to give a direction to the declarant to construct houses in the excess land. Since it is for the Government to decide whether such permission can be given to the declarant or not, this Court cannot grant the relief sought in W.P.No.9000 of 2002 merely on the basis that the declarant made promise to the weaker sections of the society to construct houses.

7. The case of the petitioner in W.P.No.20086 of 2002 is that it has an agreement of sale dated 27-03-1982 executed by the declarant in its favour. Since that agreement is long subsequent to the coming into force of the Act, and since it is well known that

an agreement of sale *per se* does not create an interest in the property agreed to be sold to the purchaser, and since a careful reading of Section 20 of the Act shows that it is the declarant that has to make an application seeking exemption under that Section, and since it is for the government to decide whether or not to give exemption to the declarant under Section 20 of the Act as per the guidelines issued by it from time to time, and since as per Section 5(3) of the Act, any transfer made by the declarant before the final decision on the declaration is null and void, I find no merits in W.P.No.20086 of 2002.

8. In my considered opinion, the contention raised by the learned counsel for the petitioner in this W.P. i.e. W.P.No.20086 of 2002, that in view of G.O.Ms.No.456 dated 29.07.2002, unless a person withdraws the proceedings instituted by him against the government, he would not be entitled to seek exemption, equally applies to the petitioner in W.P.No.20086 of 2002 also. The remedy of petitioner, if any, is to file a suit for specific performance of the agreement in its favour and seek an injunction against the owners, from a Civil Court. On the basis of a mere agreement of sale, which does not confer any interest in the land, the agreement holder without suing to specific performance of the agreement, cannot seek an injunction restraining the owner from alienating the land.

9. Hence, both the writ petitions are dismissed. No costs.

(C.Y.Somayajulu, J.)

Date: 07--02-2005

Cvrk

..... REGISTRAR

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SECTION OFFICER

To

1. The Principal Secretary, Government of Andhra Pradesh,
Revenue, UC.1 Department, Secretariat, Hyderabad.

2. The Chief Commissioner of Land Administration, Board of
Revenue Buildings, Station Road, Nampally, Hyderabad.

3. The Commissioner (Appeals), Urban Land Ceiling, Board of
Revenue Buildings, Station Road, Nampally, Hyderabad.

4. The Special Officer and Competent Authority, Urban Land
Ceilings, Arundel Complex, Rajagopalachari Street, Vijayawada - 2.

5. The District Collector, Krishna District, Machilipatnam.

6. 2 CCs to Govt. Pleader for Revenue, High Court Buildings,
Hyderabad.(OUT)

7. 2 CD copies